

# United States District Court, Northern District of Illinois

(13)

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 1802	DATE	6/19/2003
CASE TITLE	New Process Steel, LP vs. PH Group, Inc. et al.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

**MOTION:**

## Memorandum Opinion and Order

**DOCKET ENTRY:**

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Plaintiff's motion to compel and motion for imposition of sanctions under Rule 37(d) is denied. Status hearing set for July 23, 2003 at 9:15am. to stand.

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.		U.S. DISTRICT COURT CLERK JUN 20 AM 9:57 FILED-ED 10	number of notices JUN 23 2003 date docketed docketing deputy initials date mailed notice mailing deputy initials	Document Number 62
WAH courtroom deputy's initials	Date/time received in central Clerk's Office			

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

NEW PROCESS STEEL, L.P.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 02 C 1802
	)	
PH GROUP, INC. and ST. LAWRENCE	)	
HYDRAULICS, INC., f/k/a ST. LAWRENCE	)	
PRESS COMPANY, INC.,	)	
	)	
Defendants.	)	

**DOCKETED**  
JUN 23 2003

MEMORANDUM OPINION AND ORDER

Plaintiff made arrangements with the PH Group, Inc. attorneys (PH) to take the depositions of five PH employees in Columbus, Ohio, and a former employee in Detroit Michigan. Shortly before the scheduled depositions PH indicated it would not make its employees available and would not attend the deposition in Detroit. Plaintiff had subpoenaed the Detroit deponent, but, as it turned out, weather conditions prevented that one from going ahead in any event. Plaintiff's attorneys did not actually go to Ohio, given the information that the witnesses would not be available, but appeared by telephone. It now seeks a default judgment or a monetary sanction. That motion is denied.

PH's conduct, which it now apparently has thought better of, was unfortunate. If plaintiff's counsel had gone to Detroit he could have taken the deposition whether or not PH showed up. Notice to PH was sufficient to invoke an obligation on PH's part to produce the witnesses if they were managing agents of PH, but regular employees must be subpoenaed to ensure their appearance, Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d

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2103. We are given no reason to believe the employees were managing agents. While PH should have followed through, the witnesses were not obligated to appear absent a subpoena.

Apparently, discovery is now back on track. And it should be. We trust that the parties will cooperate in scheduling discovery, as that reduces the expense for all concerned.

June 19, 2003.

James B. Moran  
JAMES B. MORAN  
Senior Judge, U. S. District Court